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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91196299
Party	Defendant Digitalmojo, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Opposition No. 91196299 (Parent)

CONNECT PUBLIC RELATIONS, INC.
Opposer,

v.

DIGITALMOJO, INC., Applicant

Cancellation No. 92054395
Cancellation No. 92054427

DIGITALMOJO, INC.,
Petitioner,

v.

CONNECT PUBLIC RELATIONS, INC.
Respondent.

**RESPONSE TO MOTIONS
FOR RECONSIDERATION**

RESPONSE

Consistent with Board Order of February 23, 2012, DigitalMojo, Inc. (“DigitalMojo”) files this single response to the Motions for Reconsideration filed by Connect Public Relations, Inc. (“ConnectPR”) in the co-pending, and now consolidated, actions for cancellation, proceeding number 92054427 (CONNECT PUBLIC RELATIONS) and proceeding number 92054395 (CONNECTPR). This response is therefore filed only in this Opposition case No. 91196299, now-designated the “parent” case by such Order.

ConnectPR has filed its Motions for Reconsideration in response to the March 21, 2013 Order of the Board, in which the Board held DigitalMojo has adequately pleaded standing and abandonment in its Second Amended Petitions. ConnectPR believes the Board was in error, and again asks that the Second Amended Petitions be dismissed, consistent with ConnectPR’s earlier motion under 12(b)(6). The Board should deny ConnectPR’s Motions for Reconsideration. The issues presented by ConnectPR by its motion under 12(b)(6) have been correctly decided by the Board on March 21, 2013.

ARGUMENT

Federal Rules provide for “notice pleading.” The pleadings need not (with certain exceptions) allege facts constituting the claim for relief or defense. They need only give fair notice of the pleader’s claim or defense so that opposing parties can respond, undertake discovery and prepare for trial. See *Conley v. Gibson* (1957) 355 US 41, 47-48, 78 S.Ct. 99, 103. Thus, except when specific pleading is required, evidentiary facts need not be set forth in the complaint. See also *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit* (1993) 507 US 163, 113 S.Ct. 1160, 1162 (“(F)ederal courts and litigants must rely on summary

judgment and control of discovery to weed out unmeritorious claims...”). Further, Federal pleading requirements are extremely liberal. The rules are designed specifically to minimize disputes over pleading technicalities. See FRCP 1,8(f); and *Conley v. Gibson*, Id. Pleadings are construed liberally in favor of the pleader, and in challenging the sufficiency of a complaint, all of its material allegations are taken as true. *Jenkins v. McKeithen* (1969) 395 US 411, 421, 89 S.Ct. 184, 1849.

In a Rule 12(b)(6) motion, the court must decide whether the facts alleged, if true, would entitle plaintiff to some form of legal remedy. *Conley v. Gibson* (1957) 355 US 41, 45-46, 78 S.Ct. 99, 102. Unless the answer is unequivocally “no,” the motion must be denied. *Id.* Thus, a Rule 12(b)(6) dismissal is proper only where there is either a “lack of a cognizable legal theory” or “the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dept.* (9th Cir. 1990) 901 F2d 696, 699. “A suit should not be dismissed if it is possible to hypothesize facts, consistent with the complaint, that would make out a claim.” *Graehling v. Village of Lombard, Ill.* (7th Cir. 1995) 58 F3d 295, 297. In resolving a Rule 12(b)(6) motion, the court must (1) construe the complaint in the light most favorable to the plaintiff; (2) accept all well-pleaded factual allegations as true; and (3) determine whether plaintiff can prove any set of facts to support a claim that would merit relief. *Cahill v. Liberty Mut. Ins. Co.* (9th Cir 1996) 80 F3d 336, 337-338.

On March 21, 2013, the Board decided DigitalMojo has adequately pleaded claims of abandonment in its paragraphs 8 - 9 of the Second Amended Petitions to cancel by alleging facts that show nonuse coupled with an intent not to resume use. ConnectPR now wishes go behind paragraphs 8 - 9 of the Second Amended Petitions, by referring specifically to copies of web pages attached to the petitions, and then explaining, at length, the meaning of those copies of web

pages (see Section “III. C” of ConnectPR’s Motions for Reconsideration). ConnectPR goes on to recite (and emphasize) various text found on those copies of web pages, and presents copies of graphics which appear on those web pages (also expanded and with emphasis added).

ConnectPR concludes by interpreting all it has presented, and asking the Board to follow in that interpretation. Such explaining, recitation, emphasis, expanding, and interpretation is not appropriate at, or part of, the pleading stage of an action. The Board put this well, at least by implication, when it stated in its footnote: “Whether or not Digitalmojo can prevail on the merits in the cancellation proceedings is a matter for resolution on the merits.” The Board was correct when it determined the Second Amended Petitions to cancel set forth claims upon which relief can be granted, and the cancellation proceedings can move forward notwithstanding ConnectPR’s motion under 12(b)(6). Accordingly, the relief ConnectPR seeks by its Motions for Reconsideration should be denied.

Certainly a 12(b)(6) motion may be successful in cases where a plaintiff has included allegations disclosing some absolute defense or bar to recovery. Examples of such absolute bar include pleading facts which demonstrate a statute of limitations bar, or a lack of standing. However, ConnectPR’s factual attack on the exhibits attached to DigitalMojo’s Second Amended Petitions is not such a case. As ConnectPR’s efforts to explain those exhibits demonstrate, the meaning of the exhibits attached to the Petitions to Cancel are a matter of interpretation.¹ At this stage of the proceedings, any ambiguity in the documents must be resolved in plaintiff’s favor.

International Audio-text Network, Inc. v. AT&T Co., 62 F3d 69, 72. The complaint must be

¹ ConnectPR goes to great pains to interpret the exhibits to “clearly and unmistakably show that [its marks have] not been abandoned and [are] still in use.” However one might wonder, for instance, what ConnectPR means when it states in the exhibits that it “is supplying other traditional PR services under the Mark,” whether such “other traditional PR services” are something not the services identified in its registration, and whether some services identified in its registrations are no longer provided because they are not such “other traditional PR services.”

construed in the light most favorable to plaintiff. *Parks School of Business, Inc. v. Symington* (9th Cir. 1995) 51 F3d 1480, 1484. A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Id. Conley v. Gibson*, supra. And when a complaint's allegations are capable of more than one inference, the court must adopt whichever inference supports a valid claim. *Columbia Natural Resources, Inc. v. Tatum* (6th Cir. 1995) 58 F3d 1101, 1109. No matter how improbable the facts alleged are, they must be accepted as true for purposes of the [12(b)(6)] motion. *Neitzke v. Williams* (1989) 490 US 319, 109 S.Ct. 1827, 1833. Thus, if the Board were to consider the exhibits to DigitalMojo's Second Amended Petitions, it would come to the same conclusion it did on March 21, 2013: DigitalMojo has adequately pleaded standing and abandonment in its Second Amended Petitions, and the cancellation proceedings can move forward notwithstanding ConnectPR's motion under 12(b)(6).

CONCLUSION

Accordingly, the actions ConnectPR seeks from the Board by its Motions for Reconsideration should be denied.

Date: May 7, 2013

A handwritten signature in blue ink, appearing to read "Thomas W. Cook", is written over a horizontal line.

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this document is today being submitted via electronic filing utilizing the ESTTA system on:

Date: May 7, 2013



Thomas W. Cook

CERTIFICATE OF SERVICE

This is to certify that on this date, a true copy of the foregoing

RESPONSE TO MOTIONS FOR RECONSIDERATION

is being served, by U.S. mail, postage prepaid, addressed to the following:

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Date: May 7, 2013



Thomas W. Cook